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# Supreme Court of the United States

October Term, 1957

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DISTRICT LODGE 34, LODGE 804, INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC., ET AL.,

Petitioners,

vs.

L. P. CAVETT COMPANY,

Respondent.

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

---

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# SUPREME COURT OF THE UNITED STATES

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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District Lodge 34, Lodge 804, International Association of Machinists, AFL-CIO, International Association of Machinists and William C. Smith, John Ernst, Vincent Dalton, Dan McLaughlin, Martin Ernst, and Edgar Patrick, individually and as agents of said District Lodge 34, pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio entered in the above entitled case on June 19, 1957.

## OPINIONS BELOW

The Court of Common Pleas of Hamilton County, Ohio, rendered no separate opinion in this cause. Its finding in regard to the jurisdictional question herein raised is contained in the Entry Granting Permanent Injunction which is reprinted in the Appendix hereto (Appendix, p. 12) and is unreported.

The opinion of the Court of Appeals of Hamilton County, Ohio, is reported in 136 N.E. 2d 276 and is reprinted in the Appendix hereto (Appendix, pp. 13-18).

The Supreme Court of Ohio rendered no opinion. Its Order overruling the Motion to Certify the Record and granting Motion to Dismiss Appeal entered June 19, 1957, is reprinted in the Appendix hereto (Appendix, pp. 18-19).

## JURISDICTION

The judgment and order of the Supreme Court of Ohio was entered June 19, 1957. The jurisdiction of this Court is invoked under 28 USC 1257 (3).

## QUESTIONS PRESENTED

1. May a state court enjoin peaceful picketing of an interstate employer for the purpose of giving what it deems to be the proper effect to a National Labor Relations Board representation proceedings?

2. May a state court enjoin peaceful picketing of an interstate employer for the reason that the picketing union has lost a National Labor Relations Board representation election?

## STATUTES INVOLVED

The relevant portions of the Labor Management Relations Act, 1947, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*), provide as follows:

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employee, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"PREVENTION OF UNFAIR LABOR PRACTICES

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

## LIMITATIONS

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

## STATEMENT OF THE CASE

In March, 1955, the petitioner-union filed with the National Labor Relations Board a Petition for Certification of Representatives pursuant to Section 9 (c) of the Labor Management Relations Act seeking certification for a group of garage employees of the respondent-employer (Company Exhibit 1, Rp 139). In accordance with Board procedure, the union and the employer entered into a "Stipulation for Certification Upon Consent Election" (Co. Ex. 2, R. p. 140) under the auspices, and with the approval, of the Regional Director of the Ninth Region of the Board.

Contained in the aforementioned Stipulation was the following:

> The employer is engaged in commerce within the meaning of Section 2 (6) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9 (c).
>
> The employer is an Ohio corporation with principal office and place of business in Lockland, Ohio. The employer is engaged in the business of road construction in a number of states in the United States and performs services valued in excess of $100,000.00 outside the State of Ohio.

In accordance with the Stipulation, an election was conducted among the 7 garage employees of the respondent

which election resulted in 4 votes being tallied against the union and 3 for the union. The results of this election were duly certified by the Regional Director of the National Labor Relations Board (Co. Ex. 3–R. p. 141).

On or about April 26, 1955 a *majority* of the same 7 garage employees (to-wit, 4: petitioners John Ernst, Martin Ernst, McLaughlin, and Patrick) voted to and did engage in a strike and picketing of the employer's premises.[1] The purpose of said picketing, as found by the court below, was to obtain recognition and a collective-bargaining agreement.[2]

The respondent at no time filed any unfair labor practice charges relative to the aforementioned picketing.

## Proceedings in Common Pleas Court

On or about April 27, 1955 the respondent filed a petition (R.p. 10) in the Common Pleas Court of Hamilton County seeking to enjoin the aforementioned picketing. The petition alleged in substance that the respondent and the petitioners had entered into an election agreement under the auspices of the National Labor Relations Board for the purpose of determining a bargaining representative; that the union lost the election but notwithstanding that loss it had demanded that the respondent enter into a collective-bargaining agreement; that the respondent refused to accede to this demand; and that the petitioner commenced picketing.

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[1] One can only surmise that the results of the election were affected by the mistaken marking of one ballot by an employee.

[2] The petitioners contended below that the picketing was in protest of what they considered to be a reprisal discharge of one of the union employees. The state court, however, found the purpose to be as set forth above, and petitioners, accordingly, are in this petition assuming the correctness of that finding.

An *ex parte* temporary restraining order was issued on April 26. Immediately thereafter a Demurrer challenging the court's jurisdiction was filed (R. p. 16-22) and was subsequently overruled. The parties thereafter presented evidence to dissolve the restraining order at the conclusion of which the court permitted the restraining order to remain in effect. An answer to the petition was filed, and the evidence previously presented with certain additional stipulations constituted the evidence on trial herein.

The Common Pleas Court thereupon entered a permanent injunction enjoining the picketing on March 27, 1956 (R. p. 6, 7). In answer to the challenge of jurisdiction, the court held that the aforementioned "Stipulation for Election Upon Consent Agreement" was a "contract" which state courts had jurisdiction to enforce (App. p. 12).

## Proceedings in Court of Appeals

Timely appeal *de novo* was taken to the Court of Appeals of Hamilton County which court affirmed the order of the lower court and an entry granting the injunction as previously granted in the Common Pleas Court was entered by the Court of Appeals on October 23, 1956.

The opinion of the Court of Appeals (App. pp. 13-15) disregarded the "contract" theory but found that the Certification of Results of the election constituted "a judgment and order" of the National Labor Relations Board and that the defendants "ignored such judgment and refused to comply with the order of the Board." The court concluded *inter alia*:

1. A state court of equity may use its power of injunction to enforce "an order of the National Labor Relations Board."

2. State courts are not helpless to protect the plaintiff from a willful refusal of the defendants to abide by the "judgment of the Board."

3. The defendants cannot force the plaintiff over and over again to submit the judgment of the Board adverse to the union to be repeatedly adjudicated.

The Court of Appeals therefore concluded:

"Until Congress has definitely held that state courts are completely ousted from any jurisdiction to grant any relief in equity from such a flagrant situation, as here exists, the state courts, after original submission of the parties to the National Labor Relations Board, have the power to protect such parties from irreparable loss, for which no other adequate remedy at law exists."

### Proceedings in Supreme Court of Ohio

An appeal from the order of the Court of Appeals was taken to the Supreme Court of Ohio on a Motion to Certify the Record and an Appeal as of Right. The respondent filed a cross-Motion to Dismiss the Appeal as of Right. On June 19, 1957, without opinion, the Supreme Court of Ohio granted respondent's Motion to Dismiss the Appeal as of right and overruled petitioner's Motion to Certify the Record. The court stated that it was dismissing the Appeal "For the reason that no debatable constitutional question is involved in said cause." (App. p. 19)

It is to review this final order that this petition is submitted.

## THE FEDERAL QUESTION WAS RAISED AND PRESENTED

The federal question herein sought to be reviewed was raised by the petitioners with its initial pleading, a Demurrer challenging the jurisdiction of the court (R. p. 16). The question was again raised by the Answer in the way

of a special defense (R. p. 26). The Common Pleas Court passed on the jurisdictional question in its Entry Granting Permanent Injunction (App. p. 12).

The instant question was again raised in the appeal to the Court of Appeals in petitioners' Assignment of Errors and was specifically passed upon by that court as previously quoted (App. pp. 13-15). In the Supreme Court of Ohio the question was presented and argued in the Brief of Appellants In Support Of Appeal As Of Right And Motion To Certify and also in the Reply Brief. (R. p. 169-226).

## REASONS FOR GRANTING THE WRIT

A. The foregoing facts readily reveal that the decision of the Ohio court is in direct conflict with the decisions of this court in *Garner et al.* v. *Teamsters Union*, 346 U.S. 485; *Weber* v. *Anheuser-Busch, Inc.* (1955), 348 U.S. 593; *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U.S. 656; *Arkansas Oak Floor* v. *United Mine Workers*, 351 U.S. 62; *P. S. Guss* v. *Utah Labor Relations Board*, 353 U.S. 1; *Amalgamated Meat Cutters* v. *Fairlawn Meats, Inc.*, 353 U.S. 20; *San Diego Building Trades Council* v. *Garmon*, 353 U.S. 26. The Ohio court, in constituting itself a forum for deciding facts and effectuating remedies in matters arising out of a certification proceedings under the Labor Management Relations Act, 1947, has asserted jurisdiction in an area which is within the exclusive province of the National Labor Relations Board. *Weber* and *Arkansas Oak* make it clear that the preemption doctrine is not diminished merely because the union fails to be certified under Section 9 (c) of the Act.

In *Fairlawn Meats, supra*, this court found it necessary to reverse the Supreme Court of Ohio when that court enjoined minority picketing for recognition of an employer over which the National Labor Relations Board had jur-

isdiction but had refused to exercise that jurisdiction. Here again, and in spite of the decision in the *Fairlawn* case, the Ohio court acted in a recognition-picketing case in which the Board not only had exclusive jurisdiction but had exercised that jurisdiction. Certainly, if a state court cannot act in a case in which the Board has jurisdiction but refuses to exercise it, *a fortiori* a state court cannot act in a similar case in which the Board has exercised its jurisdiction.

The Ohio court did recognize the jurisdiction of the Board but fashioned what it considered to be a judgment in aid of the federal agency's proceedings. It is significant to note, however, that the result reached by the Ohio court in enjoining the picketing is contrary to that which would have been reached by the National Labor Relations Board Administrative Ruling of NLRB General Counsel, Case No. 1133, 35 LRRM 1533 (1955). Unlike *Garner* and *Weber*, petitioners believe that the activity enjoyed by this Ohio court is "protected" under Section 7 of the Federal Act.[8] Thus, this case more closely resembles *United Automobile Workers* v. *O'Brien*, 339 U.S. 454. In any event, however, it is apparent that the attitude of the Ohio court toward this labor controversy and the procedures used to implement such attitude have produced incompatible and conflicting adjudications at variance with the clear intent of the Labor Management Relations Act. cf. *Garner* v. *Teamsters Union*, *supra*.

B. The only argument asserted below in support of the state jurisdiction was that the National Labor Relations Board "Stipulation for Election Upon Consent Agreement" entered into by the parties is a "contract" which

[8] *UMW* v. *Arkansas Oak Flooring*, *supra*. Ecko Products Inc., 1957, 117 NLRB No. 31.

state courts have jurisdiction to enforce.[9] This argument is disposed of summarily:

1. The said Stipulation refers only to the details of the election and contains no agreement which binds the union not to engage in picketing for recognition. Indeed, such an interpretation would be contrary to the express language of Section 13 of the Act.

2. Assuming arguendo that the Stipulation created a private "contractual right", this court has repeatedly held that state courts do not acquire jurisdiction merely because of the application of some doctrine of private right. In this connection, the instant case is similar to *Retail Clerks International Association et al. v. J. J. Newberry Co.*, 352 U.S. 987, wherein the union withdrew from an executed NLRB Election Agreement similar to the instant one after it became convinced it would not win an election, and thereafter commenced picketing.

## CONCLUSION

For the reasons above set forth, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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[9] In support of this argument, respondent cited *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437. This case is inapposite since it deals with a suit for damages, the primary issue therein dealing with Section 301 of the Act.

## APPENDIX IX

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### ORDER FOR PERMANENT INJUNCTION

Mar. 27 (Jan Ter) Order for permanent injunction. Min. 2243. This cause came on to be heard upon plaintiff's petition and applicaton for permanent injunction and upon the answer, as amended, of the defendants District Lodge 34, Lodge 804, International Association of Machinists, A. F. L., William C. Smith, John Ernst, Vincent Dalton, Dan McLaughlin, Martin Ernst and Edgar Patrick, and upon the record and transcript of evidence stipulated by the parties hereto and upon the argument of counsel and has been considered by the court; whereupon the court finds that this cause is an action based on breach of contract, to wit, breach of a consent election agreement, and the court has jurisdiction of the subject matter of this cause; and that plaintiff's petition for a permanent injunction is well taken and should be granted against all of the defendants and all persons represented by them or acting for on or in concert with them, and each of them.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that plaintiff's petition for a permanent injunction be, and it hereby is, granted; and that the defendants and all persons represented by them or acting for or in concert with them, and each of them, be, and they hereby are permanently restrained and enjoined from all picketing, bannering, and interference with the operations of plaintiff, and from any and all efforts, attempts, conspiracies, combinations, confederations and agreements, all for the purpose of threatening, intimidating, or harassing plaintiff into entering into a collective bargaining contract with the defendant unions or hiring the defendant

John Ernst. Defendants include all of the parties mentioned in the caption of the petition in this cause.

The plaintiff shall recover from defendants its costs herein expended. Bond Five Hundred Dollars ($500.00). To all of which defendants except.

/s/ CARSON HOY
Judge

Have seen:
/s/ J. W. BROWN
/s/ JONAS B. KATZ
Attorneys for Defendants

TAFT, STETTINIUS & HOLLISTER
By /s/ J. MACK SWIGERT
CHARLES D. LINDBERG
Attorneys for Plaintiff

## OPINON OF THE COURT OF APPEALS

PER CURIAM.

The simple question here presented is whether, after the plaintiff has complied with all procedure required to determine the respective rights of the plaintiff and the rights of the defendants before the National Labor Relations Board, and the Board has, after an election ordered by it, duly held, rendered judgment adversely to the defendants, holding they have no authority to act as the bargaining agent in the premises, that the defendant, ignoring such judgment, may demand of the plaintiff that they be considered as such bargaining agent, and, upon refusal of plaintiff, in compliance with the order of the Board, may lawfully picket the business of plaintiff?

This question involves a corollary question—is the jurisdiction of the state courts completely abrogated, so that

such courts may not by the power of injunction protect the plaintiff from the refusal of the defendants to acknowledge the order of the National Labor Relations Board.

There is no dispute between the plaintiff and its employees which has not been adjudicated by the National Labor Relations Board. Can it be that the State Courts are helpless to protect the plaintiff from the wilful refusal of the defendants to abide by the judgment of the Board, especially after agreement to submit such matter to the Board.

*Grimes & Hauer, Inc.* v. Pollack, et al., 163 Ohio St., 372, has no application to the instant facts. In that case, the employer resorted to the state courts before having his dispute with the Union adjudicated by the Board.

If the defendants may ignore, once, the judgment of the board, they could ignore it a dozen or more times, forcing the plaintiff over and over again to submit a judgment, adverse to the union, to be repeatedly adjudicated. Such could not have been the intention of Congress in enacting the National Labor Relations Act.

Until Congress has definitely held that State Courts are completely ousted from any jurisdiction to grant any relief in equity from such a flagrant situation, as here exists, the State courts, after original submission of the parties to the National Labor Relations Board, have the power to protect such parties from irreparable loss, for which no other adequate remedy at law exists. Some attempt is made by the defendants to predicate this repeated demand for recognition as the bargaining agent, on the discharge of one of plaintiff's employees. This was made the basis of a complaint to the National Labor Relations Board and the adjudication of the Board was adverse to the defendants. So that it is apparent that the claims of the defendants are predicated upon the same basis as that previously adjudicated against them by the National Labor Relations Board.

No actual labor dispute exists. Picketing, under such circumstances, is an invasion of the rights of the employees not to participate in union activity, and of the plaintiff's right to operate its business without wrongful interference, which would, and does violate the public policy of the State.

The same decree as that entered in the trial court, permanently enjoining interference with the plaintiff's business by defendants, may be entered as the decree of this Court.

ROSS, P. J., & HILDEBRANT, J., CONCUR
MATTHEWS, J., CONCURS IN SEPARATE MEMORANDUM

MATTHEWS, J., (Concurring)

I cannot agree that this case presents either the "simple question" or the "corollary question" propounded in the first two paragraphs of the opinion of my associates.

The undisputed facts are that the plaintiff is a corporation and was at the time in question engaged in interstate commerce, and that the defendant District Lodge 34, Lodge 804, International Association of Machinists, A.F.L., on or about February 14th, 1955 filed with the National Labor Relations Board a petition for an election to determine the representation of certain of its employees who were engaged in interstate commerce, and on March 23rd, 1955 a stipulation was signed and filed with the Board agreeing to the election and expressly waiving the making of findings of fact and conclusions of law prior to the election, which would have been required in the absence of such stipulation. The plaintiff alleged that the defendant Union by signing the stipulation agreed to abide by the results of such election. While, without doubt, it would have been bound by the election, whether conducted with

or without stipulation. I find no provision of the stipulation upon which to found a contractual obligation to be bound by the result.

On March 31st, 1955, the election was held and a majority of the employees voted against having the defendant Union as their representative in collective bargaining. The Union filed no objection to the election, and on April 8th, 1955, the National Labor Relations Board certified the result of the elections to the parties.

Thereafter, on April 26th, 1955, the defendant Union demanded that the plaintiff immediately enter into a collective bargaining agreement with it on behalf of the plaintiff's employees, and also that the plaintiff re-employ the defendant, John Ernst, a member of defendant Union whom the plaintiff had discharged because, as it claimed, for dishonesty, and, as claimed by defendants, because of union activities. The defendant Union notified the plaintiff that if it did not comply at once, its place of business would be picketed.

The plaintiff refused the demand and on April 27th, 1955, the defendants caused the plaintiff's place of business to be picketed. Thereafter, on the same day, this action was filed to enjoin the picketing, and a temporary restraining order was granted. And, on the next day, the defendant, John Ernst, filed with the National Labor Relations Board his complaint against the plaintiff, alleging that his discharge was an unfair labor practice, in that it was because of his activities on behalf of the defendant Union.

On August 8th, 1955, the Regional Director notified the parties that it did not appear that there was sufficient evidence of violation to warrant further proceedings at that time, and, for that reason, he was refusing to issue a complaint.

The picketing, prior to the temporary restraining order, was not accompanied by any violence or disorder, and, of course, there has been no picketing since.

Counsel for the plaintiff seems to base his right to an injunction on the stipulation signed by the parties consenting to the election. He interprets that stipulation to be an agreement to abide by the result of the election. As already noted, I do not so construe the stipulation and for that reason do not regard the case of *General Electric Co.* v. *Union*, 93 Ohio App., 139, as applicable.

Upon first consideration of this case, my conclusion was that *Grimes & Hauer, Inc.* v. *Pollock*, 163 Ohio St., 372, and *Garner* v. *Union*, 346 U. S. 485, were applicable and required a reversal of this judgment, but, on June 4th, 1956, the Supreme Court of the United States decided the case of *United Automobile, etc. Workers of America* v. *Wisconsin Employment Relations Board, and Kohler Co.*, reported in United States Law Weekly Bulletin of June 5th, 1956, which causes me to revise my conclusion.

In the *Wisconsin case* the picketing, which was enjoined, was apparently aggravated by some violence. In any event it was an unfair labor practice under both the National Labor Relations Act and the Wisconsin Employment Peace Act. The Supreme Court of the United States sustained the judgment of the Wisconsin Court enjoining the picketing. In the opinion, concurred in by six of the Justices, it is said: "As a general matter we have held that a state may not, in the furtherance of its public policy, enjoin 'conduct which has been made an 'unfair labor practice' under the federal statutes' * * * * but our past Taft-Hartley opinions have made it clear that this general rule does not take from the states power to prevent mass picketing, violence and overt threats of violence".

In view of this more recent decision of the Supreme Court of the United States, I am of the opinion that the fact that the acts enjoined come within the category of unfair labor practices, as defined by Section 8 of the Labor Management Relations Act, does not render it void as beyond the jurisdiction of the state court. In this connection, I call attention to the fact that the provision in Section 8, making picketing of all sorts to compel an employer to designate a particular union as the bargaining agent, an unfair labor practice is in harmony with the Ohio rule making peaceful picketing to compel unionization, when no dispute exists between the employer and his employees, unlawful.

For these reasons, I concur with my associates that the same decree as was entered in the trial court should be entered in this court.

Filed, February 20, 1957, Supreme Court of Ohio.

## SUPREME COURT OF OHIO

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## ORDER ON MOTION TO DISMISS APPEAL AS OF RIGHT

It is ordered by the Court that this motion be, and the same hereby is, sustained.

J. 42 - P. 344

Entered June 19, 1957.

## SUPREME COURT OF OHIO

---

### ORDER ON APPEAL FROM THE COURT OF APPEALS OF HAMILTON COUNTY

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, upon the motion of the appellee to dismiss the appeal filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellants its costs herein expended, taxed at $.....

ORDERED, That a special mandate be sent to the Court of Appeals of Hamilton County, to carry this judgment into Execution.

J. 42 - P. 350

Entered June 19, 1957

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In The

# Supreme Court of the United States

October Term, 1957

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DISTRICT LODGE 34, LODGE 804, INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC., ET AL.,

Petitioners,

vs.

L. P. CAVETT COMPANY,

Respondent.

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## BRIEF FOR RESPONDENT IN OPPOSITION

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**On Petition for Writ of Certiorari to The Supreme Court of Ohio.**

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## STATUTES

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In The

# SUPREME COURT OF THE UNITED STATES

October Term, 1957

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No. 453

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DISTRICT LODGE 34, LODGE 804, INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC., ET AL.,
Petitioners,

vs.

L. P. CAVETT COMPANY,
Respondent.

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## BRIEF FOR RESPONDENT IN OPPOSITION

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**On Petition for Writ of Certiorari to The Supreme Court of Ohio**

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L. P. Cavett Company respectfully prays that the petition for Writ of Certiorari to review the judgment of the Supreme Court of Ohio entered in the above entitled case on June 19, 1957, be denied.

## OPINIONS BELOW

The opinions below are set forth in the Petition for a Writ of Certiorari, p. 2.

## JURISDICTION

The claimed jurisdiction of this Court is set forth in the petition, p. 2.

## QUESTIONS PRESENTED

1. May Ohio Courts enjoin picketing in breach of a contract between a labor union and an employer engaged in interstate commerce?

2. May Ohio Courts enjoin picketing in violation of public policy where such picketing is neither protected nor prohibited by Federal law?

## STATUTES INVOLVED

Section 301(a) of the Labor-Management Relations Act, 1947, as amended (61 Stat. 156, 29 U.S.C. Sec. 185) provides as follows:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

## STATEMENT OF THE CASE

Respondent, The L. P. Cavett Company, is an Ohio corporation engaged in road construction and retail oil sales. (R. 136) It maintains in Cincinnati an office and garage building and asphalt storage plant. (R. 136-137) During the winter months of 1954-1955, the respondent employed in Cincinnati between twenty-five and thirty persons. (R. 137) On February 14, 1955, petitioner District Lodge 34, Lodge 804, International Association of Machinists, AFL, filed with the National Labor Relations Board a petition for certification of representatives. The petition was signed by D. J. Tomer, Grand Lodge Representative of petitioner International Association of Machinists (AFL) and alleged

that a substantial number of garage employees of the L. P. Cavett Company in Cincinnati wished to be represented for purposes of collective bargaining by the union and that the union desired to be certified as the collective bargaining representative for these employees. (Co. Ex. 4; R. 139) This petition was docketed by the Board as Case No. 9-RC 2438.

Subsequent to the filing of the petition and on March 23, 1955, representatives of L. P. Cavett Company, the District Lodge, and the International, held a conference at the office of the National Labor Relations Board. At this conference, the Cavett Company and the Union entered into a contract entitled "Stipulation for Certification upon Consent Election." (Co. Ex. 2; R. 140) The contract provided, in part:

> "The undersigned labor organization(s) (herein called the union(s)) claim(s) to represent employees of the undersigned employer (herein called the employer), and the undersigned parties desire that the question concerning the representation of said employees which exists by virtue of said claim shall be resolved by an election by secret ballot. Therefore, the said parties, subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), HEREBY AGREE AND STIPULATE AS FOLLOWS:
>
> "1. SECRET BALLOT.—An election by secret ballot shall be conducted under the supervision of the Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by (one of) the Union(s). Said election shall be held in accordance with the National Labor

Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board.

* * * *

"11. THE APPROPRIATE COLLECTIVE BARGAINING UNIT — All regular mechanics and their helpers and welder employed in the Employer's garage at Lockland, Ohio, excluding office clerical employees and all guards, professional employees and supervisors as defined in the Act, as amended, and all other employees." (Emphasis added)

The agreement was signed by L. P. Cavett Company by J. Mack Swigert, attorney, and by District Lodge 34, Lodge 804, International Association of Machinists, AFL, 440 National City Bank Building, Cleveland, Ohio, by D. J. Omer, Grand Lodge Representative. The contract was recommended by Rosemary S. Macke, Field Examiner, and approved by Jack G. Evans, Regional Director.*

Pursuant to the terms of the contract, on March 31, 1955, a secret ballot election, conducted by representatives of the Board, was held at the Cavett Company among all regular garage mechanics and their helpers and welder to determine the question of union representation. A tally of the ballots showed that four employees had voted against representation by the union and three had voted in favor of representation. (Co. Ex. 5; R. 142) The union observer certified this tally as correct and the union filed no objections to the tally or the conduct of the election. On April 8, 1955, the Regional Director of the Labor Board issued a "Certification of Results of Election." (Co. Ex. 3; R. 140) The certification stated in part:

"IT IS HEREBY CERTIFIED that a majority of the valid ballots have not been cast for the union

*A copy of this contract is attached to this brief as Appendix 1.

above named and that said union is not the exclusive representative of the employees of the above named employer, in the unit defined in the Stipulation for Certification Upon Consent Election within the meaning of Section 9(a) of the National Labor Relations Act." (Emphasis added)

On April 21, 1955, Mr. L. P. Cavett, President of the Company, discharged an employee, John Ernst, because he had falsified his time cards and had failed to perform his work properly. (R. 232-233)

On Monday, April 25, 1955, Mr. Cavett received a telephone call from Mr. William Smith, Business Agent of the District Lodge 34, who had been present at the signing of the consent election contract. Mr. Smith stated that he wanted the Cavett Company to take back John Ernst and following that he wished to negotiate with Mr. Cavett regarding a contract for the garage employees. (R. 142-143) Smith said:

"* * * I know they loused an election but there is other means of a union getting into an organization other than through an election, and * * * I know where every piece of your equipment is * * * unless you do these things that we request, or that I request * * * we will picket your Lockland establishment as well as all your other equipment that is out on the road." (R. 232)

On April 27, 1955, a picket line was established by the petitioner unions at the Cavett Company. Three of the garage employees crossed the picket line and came to work, while three of them refused to cross the line and participated in picketing. John Ernst, the former employee, also participated in the picketing and bannering. (R. 147-148) The purpose of this picketing was to obtain recognition of the union and a collective bargaining contract for the garage employees.

On or about April 27, 1955, respondent filed its petition in the Court of Common Pleas, Hamilton County, to enjoin the picketing.

## PROCEEDINGS IN COMMON PLEAS COURT COURT OF APPEALS AND SUPREME COURT OF OHIO

Upon consideration of the evidence in the instant case, the Ohio Court of Common Pleas found that the election agreement was an enforceable contract. The Court then ruled that state courts have jurisdiction over contractual actions and enjoined the picketing which was in breach of contract. (Petition p. 12-13).

The Court of Appeals, after considering the stipulated facts, likewise enjoined the picketing. In its majority opinion, the Court stated that in cases where a Board election has determined the question of union representation, and "especially" where the employer and union have by "agreement" submitted the matter, the state courts have the power to protect an employer from the wilful refusal of a union to abide by the election results. The Court thus broadened the Common Pleas decision by holding that such illegal conduct could be enjoined even in the absence of a contract breach. (Petition p. 13-18).

The Ohio Supreme Court on June 19, 1957, overruled petitioners' motion to certify the record and granted the respondent's motion to dismiss the appeal as of right. The Court held that it was dismissing the appeal "for the reason that no debatable constitutional issue is involved in said cause." (Petition, p. 19)

## ARGUMENT

**1. The Writ of Certiorari Was Recently Denied by this Court in a Case Raising the Same Issue as that Raised by Petitioner Herein.**

The Ohio Court of Common Pleas enjoined petitioner's conduct in the instant case because the activity was in breach of an enforceable contract entered into between petitioner and respondent. (Petitioner's Brief, p. 12) This judgment was affirmed by the Court of Appeals, and the Ohio Supreme Court denied petitioner's appeal and motion to certify. (Petitioner's Brief, pp. 18-19) The same issue presented herein, namely, the jurisdiction of a state court to enjoin conduct which is in breach of contract, was presented to this Court in *Philadelphia Marine Trade Association v. International Longshoremen's Association, Local 1291, et al.*, (1955) 382 Pa. 326, 115 A.2d 733, cert. den. 350 U.S. 843. In this case the Pennsylvania Supreme Court upheld a decision of the Philadelphia County Court of Common Pleas which enjoined the defendant from violating its collective bargaining agreement and from engaging in any conduct violating its no work-stoppage agreement. The Court specifically rejected the defendants' claim that the state had no jurisdiction over actions to enjoin breach of contract.

The *Philadelphia Marine Trade* cause came before this Court in the October Term of 1955 as Case No. 289 on the Petition of the defendants for a Writ of Certiorari to the Supreme Court of Pennsylvania. On October 10, 1955, this Court denied the Writ. The considerations applied in denying the Writ in the *Philadelphia Marine Trade* case should similarly be applied in the instant proceeding to deny the Writ.

**2. The Decisions of the Ohio Courts in this Cause Were Correct.**

**(a) The Ohio Court Had Jurisdiction of this Matter for the Reason that the Cause Was Based on Breach of Contract:**

As set forth in the statement of the case, the respondent and the petitioner Union on March 23, 1955, entered into a written contract at Cincinnati, Ohio, entitled "Stipulation for Certification upon Consent Election." In the contract the parties agreed that a question had been raised concerning the representation of the respondent's employees by the petitioner Union and agreed that this question should be "resolved by an election by secret ballot." The election was to be conducted by the Regional Director of the National Labor Relations Board and would "determine whether or not the employees desire to be represented by the Union." Despite the signed contractual provisions that the election would determine and resolve the question of union representation, the petitioner Union, after losing the election, began picketing the employer's place of business to force the Company to recognize it and to negotiate with it for a union contract for the seven garage employees. It is inescapable that the picketing was in violation of the election contract. The parties had agreed to resolve and determine the representation question by means of an election; the election resolved and determined the issue against the Union; the subsequent picketing to obtain recognition and a collective bargaining contract despite the prior resolution and determination of the question was thus a breach of the parties' contract. The legal remedy for this outrageous conduct was inadequate, and the respondent which was suffering irreparable injury was found by the Ohio courts to be entitled to equitable relief. This Court has repeatedly held that as a court of law, and not a court of error, it will not grant certiorari nor disturb the determination of lower courts on factual issues such as those presented herein. *Southern Power Co.* v. *North Carolina Public Service* (1923) 263 U.S. 508; *Graver Tank & Mfg. Co.* v. *Linde Air Prod. Co.* (1948) 336 U.S. 271.

The federal pre-emption doctrine has no application in this case to divest the State court of jurisdiction. The present cause was based on breach of contract, and this Court and other forums have recognized that Federal labor relations statutes do not exclude State courts from their historical jurisdiction over contracts between employers and labor unions. In *Philadelphia Marine Trade Association* v. *International Longshoremen's Association, Local 1291, et al.*, (1955) 382 Pa. 326, 115 A.2d 733, cert.den. 350 U.S. 843; the Pennsylvania Supreme Court in considering Section 301 of the Labor-Management Relations Act, 1947, held that state courts are not thereby divested of their historical jurisdiction to enforce contracts between employers and labor unions. The court said:

> Defendants present several questions for determination, one of which challenges the jurisdiction of the court below on the ground that plaintiffs' complaints are cognizable only in a Federal and not a State court. This contention is specifically answered by the decision of this Court in *General Building Contractors' Association* v. *Local Union No. 542*, 370 Pa. 73, 87 A.2d 250 (cited with approval in *Garner* v. *Teamsters, Chauffeurs and Helpers, Local Union No. 776*, 373 Pa. 19, 25, 94 A.2d 893, 897). In that case we upheld the granting of an injunction which enjoined the violation of a collective bargaining agreement by a labor union. It was there argued that Congress, by enactment of the Labor-Management Relations Act of 1947, had taken from the State courts the jurisdiction to issue such an injunction; but we held that neither that Act nor any other Federal legislation deprived the State courts of their inherent equity powers for the enforcement of contracts. We pointed out that Section 301 of the Labor-Management Relations Act, giving juris-

diction to District Courts of the United States of suits for violation of contracts between an employer and a labor organization representing employes in an industry affecting commerce, did not indicate that such jurisdiction was to be exclusive; moreover, it applied only to suits for the recovery of damages, not for injunctive relief, the right to grant which had been denied to such courts by the Norris-LaGuardia Act of 1932. We said, (p. 82, A., p. 253):

"There does not exist any repugnance or conflict, direct or indirect, between the exercise of jurisdiction by a court of equity as in the instant case and the Labor Management Relations Act and the Norris-LaGuardia Act. There are no statutes which would curtail the exercise of jurisdiction by the Court in the circumstances here presented. Prevention of violation of obligations contained in a contract by injunctive relief is a power traditionally exercised by courts of this Commonwealth. Congress has not acted upon the specific subject matter at issue. Enforcement of contracts may be required according to the usual processes of the law." (382 Pa. at p. 332-335) (Emphasis added)

Similarly, in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, (1955) 348 U.S. 437, this Court, recognizing that the doctrine of federal pre-emption frequently had been applied to cases involving unfair labor practices, noted in support of its decision that breach of contract was not an unfair labor practice. The Court stated:

"It is significant, however, that breach of contract is not an 'unfair labor practice.' A proposal to that end was contained in the Senate Bill, but was deleted in conference with the observation: 'Once parties have

> made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." 348 U.S. at p. 343; Note 2. (Emphasis added)

The *Westinghouse* decision and the denial of certiorari in the *Philadelphia Marine Trade* case were entered subsequent to *Garner* v. *Teamsters* (1953) 346 U.S. 485, and indicate a broad exception to the pre-emption doctrine enunciated in *Garner*. Moreover, the post-*Garner* cases do not purport to limit the historical power of states to enjoin breach of contract. This broad state power has been consistently recognized by courts and Boards of the various states and territories. See *General Electric Co.* v. *UAW-CIO* (Ohio: 1952) 93 O.A. 139, 108 N.E.2d 211; app.dis. 158 O.S. 555; *Liberty Powder Defense Corp.* (Wisconsin: 1955) 35 LRRM 1590; *Dairymen's Ass'n.* v. *Teamsters Local* (Hawaii: 1954) 33 LRRM 2785; 34 LRRM 2785.

**(b) Even in the Absence of Contract Violation, the Ohio Court Would Have Had Jurisdiction of this Cause for the Reason that Petitioners' Conduct Was Neither Protected Nor Prohibited by the Labor-Management Relations Act of 1947.**

The facts in the instant case disclose that the petitioners' picketing constituted a breach of contract and that the Ohio courts had jurisdiction to enjoin such a breach. Although this would appear dispositive of the petition for certiorari, it should be noted that even in the absence of contract the state courts retain jurisdiction to enjoin a union which pickets a company after losing a National Labor Relations Board directed election. Such conduct is against the public policy of Ohio and other states and constitutes picketing for an unlawful purpose. The Ohio Court

of Appeals, speaking on the public policy issue in the present case, noted:

> "No actual labor dispute exists. Picketing, under such circumstances, is an invasion of the rights of the employees not to participate in union activity, and of the plaintiff's right to operate its business without wrongful interference, which would, and does violate the public policy of the State." (Petition p. 15)

Similarly, in *Kincaid-Webber Motor Co.* v. *Quinn*, (1951) 362 Mo. 375, 241 S.W.2d 886, the Missouri Supreme Court affirmed an injunction against picketing by a union to compel recognition and a contract after the union had lost an election. Accord: *Bitzer Motor Co.* v. *Teamsters* (1953) 349 Ill.App. 283, 110 N.E.2d 674; *Amalgamated Meat Cutters* v. *Green* (1948) 119 Colo. 92, 200 P.2d 924; *Ford Radio and Mica Corp.* v. *UAW* (N.Y. Sup.Ct.; 1954) 34 LRRM 2094. This Court has held that the State courts have the right to determine and express state public policy, as was done in the above cases. *Hughes* v. *Superior Court* (1950) 339 U.S. 460.

The petitioner in its application for a writ of certiorari has claimed that the exercise of state jurisdiction is unlawful because of the decision of this Court in *Garner* v. *Teamsters* (1953) 346 U.S. 485, and subsequent cases. These cases, of course, have no application to enforcement of valid contracts. And even where no contract exists, the decisions clearly indicate that such conduct is subject to State jurisdiction. In *Garner* there had been no election, and this Court found that the minority recognitional picketing therein was subject to the remedial relief of the National Labor Relations Board. This Court said, at 346 U.S., p. 488,

> "This is not an instance of injurious conduct which the National Labor Relations Board is without ex-

press power to prevent and which, therefore, is governable by the states or is entirely ungoverned. In such cases we have declined to find an implied exclusion of state powers."

In *United Construction Workers* v. *LaBurnum* (1954) 347 U.S. 656, which was decided six months after *Garner*, this Court made clear that State courts are deprived of jurisdiction only to the extent that the Labor Management Relations Act supplies a definite and positive remedy against unfair labor practices. The Court said at page 665, referring to *Garner*:

> "To the extent that Congress prescribed preventive procedure against unfair labor practices, that case recognizes that the Act excluded conflicting state procedure to the same end. To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated. The care we took in the Garner case to demonstrate the existing conflict between state and federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived." (Emphasis added)

Similarly, in *Weber* v. *Anheuser-Busch, Inc.*, (1955) 348 U.S. 468, this Court stated:

> "In *Garner*, the emphasis was not on two conflicting labor statutes but rather on two similar remedies, one state and one federal, brought to bear on precisely the same conduct." (Emphasis added) 348 U.S. at pp. 479-480.

In the above cases this Court thus has ruled that states retain jurisdiction over illegal conduct which is not subject to the remedial provisions of the Taft-Hartley Act for unfair labor practices. The General Counsel of the National Labor Relations Board has ruled that picketing of an employer by a union which loses an election is not subject to the Act's remedial provisions for unfair labor practices. *Case No. 1133* (1955), 35 LRRM 1533. And Section 3(d) of the Act provides that the General Counsel "shall have final authority on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10 and in respect of the prosecution of such complaints before the Board."

Picketing after a Board directed election similarly is not a protected activity under Section 7. Section 7 specifically protects the right of employees "to refrain from any or all" union activities including forming, joining or assisting labor organization, collective bargaining and other concerted activities. Picketing by a union which loses a Board ordered election clearly is an interference with the rights of employees "to refrain from" unionism and collective bargaining activities. In *UMW v. Arkansas Oak Flooring* (1956) 351 U.S. 62, no election was held, and the union representing a majority of employees picketed for recognition. The Court pointed out that under such circumstances the employees and their union could "peacefully picket the premises of their employer, to induce it thus to recognize their chosen representative." This Court held that the state had no jurisdiction to enjoin the protected picketing carried on by the union which was the chosen representative of its employees. The decision clearly indicates that where a union loses an election it is not the chosen representative and does not engage in protected conduct.

In *Retail Clerks International Association, Local 560* v. *J. J. Newberry* (1957) 352 U.S. 987, the union picketed for recognition, although no election had been held. The picketing in *Newberry* was thus identical to the picketing activity in *Garner* and this Court consequently reversed the Idaho Supreme Court which had exercised jurisdiction in the cause. In the present case, however, the General Counsel has ruled that picketing *after* an election is not an unfair labor practice; it also is clear that under *Garner* and *Newberry* such activity is not protected conduct. In *Weber* v. *Anheuser-Busch* (1955) 348 U.S. 468, this court set forth as an area wherein states retain jurisdiction cases which involve conduct which is "neither prohibited nor protected by the Taft-Hartley Act", p. 477. Consequently, even in situations where no contract is involved, recognitional picketing after a union has lost a Board ordered election is the very type of illegal activity which this Court has left within the broad historical jurisdiction of the states.

The petitioners rely upon *Guss* v. *Utah Labor Relations Board*, (1957) 353 U.S. 1; *Amalgamated Meat Cutters* v. *Fairlawn Meats*, (1957) 353 U.S. 20; and *San Diego Building Trades Council* v. *Garmon*, (1957) 353 U.S. 26. These decisions present no basis for granting the instant writ. The National Labor Relations Board has no jurisdiction whatsoever where conduct is not an unfair labor practice in violation of Section 8 of the Labor-Management Relations Act, and has been left subject to "the usual processes of the law." Breach of contract is not an unfair labor practice, and even in the absence of contract, picketing by a union which loses a Board ordered election is not an unfair labor practice.

## CONCLUSION

It is respectfully submitted that the petition for certiorari should be dismissed in this cause. No question of public

importance is presented and this Court has recently denied a writ raising the same issue as that raised herein. The picketing which was in breach of contract clearly was within the state's historical jurisdiction, and the fact that the contract was between a company and a labor union in no way limited this jurisdiction. Even if a contract were not involved, the picketing would have been within the state's jurisdiction because it was neither protected nor prohibited by the Labor-Management Relations Act, 1947.

WHEREFORE, the respondent prays that the petition for writ of certiorari to the Supreme Court of Ohio be denied.

Respectfully submitted,

LEONARD A. WEAKLEY
Attorney for Respondent
603 Dixie Terminal Building
Cincinnati 2, Ohio

## APPENDIX I

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## UNITED STATES OF AMERICA
## NATIONAL LABOR RELATIONS BOARD

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## STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION

(RC and RM cases)

The undersigned labor organization (s) (herein called the union(s) ) claim(s) to represent employees of the undersigned employer (herein called the employer), and the undersigned parties desire that the question concerning the representation of said employees which exists by virtue of said claim shall be resolved by an election by secret ballot. Therefore, the said parties, subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. SECRET BALLOT – An election by secret ballot shall be conducted under the supervision of the Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by (one of) the Union (s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board.

2. ELIGIBLE VOTERS – The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of

the United States who appear in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election and any employees on strike who are not entitled to reinstatement. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any specifically excluded from eligibility.

3. NOTICES OF ELECTION — The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS – Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

5. POST-ELECTION AND RUN-OFF PROCEDURE — All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

6. RECORD — The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

7. COMMERCE – The Employer is engaged in commerce within the meaning of Section 2 (6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9 (c).

Employer is an Ohio corporation with principal office and place of business in Lockland, Ohio. Employer is engaged in the business of road construction in a number of states in the United States and performs services valued in excess of $100,000.00 outside the State of Ohio.
(Insert commerce facts)

8. NAMES ON BALLOT – In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

FIRST
SECOND
THIRD
FOURTH

9. PAYROLL PERIOD FOR ELIGIBILITY – March 20, 1955.

10. DATE, HOURS, AND PLACE OF ELECTION – March 31, 1955, 11:00 a.m. to 11:15 a. m., Asphalt Plant Office.

11. THE APPROPRIATE COLLECTIVE BARGAINING UNIT – All regular mechanics and their helpers and welder employed in the Employer's garage at Lockland, Ohio, excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act, as amended, and all other employees.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

| | |
|---|---|
| Employer | DISTRICT LODGE 54 LODGE 801 |
| | Name of Organization |
| | INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL |
| L. P. CAVELL COMPANY | Address |
| Address | 410 National City Bank Bldg., Cleveland, O. |
| 511 Sheppard Avenue, Lockland, Ohio | By (Name and Title) |
| By (Name and Title) | s/ D. J. Oney |
| s/ J. Mack Swigert | |
| J. Mack Swigert, Attorney | |
| Date Executed | Name of Organization |
| March 23, 1955 | D. J. Oney, Grand Lodge Representative |
| Recommended | Address |
| Signature | |
| s/ Rosemary S. Macke | By (Name and Title) |
| Field Examiner, National Labor Relations Board | |
| | Name of Organization |
| Approved | |
| Signature | Address |
| s/ Jack G. Evans GMD | |
| Regional Director, National Labor Relations Board | By (Name and Title) |
| March 23, 1955 | |
| Date | CASE NO. 9-RC-2438 |